IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 59 OF 2004

Ms. Kabraji Associates .. Petitioners.

vs.

WB Engineers International

Pvt. Ltd., .. Respondents.

Mr. B.H. Patel i/by Crawled Bayley & Co.

for petitioner.

Mr. A.M. Setalwad with M.J. Jamdar

for the Company.

CORAL : S.U.KAMDAR, J.

DATE : 18th MARCH, 2005.

P.C.

1. The present petition is filed by the petitioner inter alia claiming a sum of Rs. 18,24,115/- as a principal amount plus interest thereon. Few facts of the present case are as under:-

2. The petitioners were appointed as consultants of the respondent company on a commission. It was agreed that Rs. 25,000/- per

month as advance will be paid to the petitioner and the balance will be paid on completion of the business and receipt of full payment. The total entitlement was 25% of the profit on the said business earned by the company. This arrangement was carried on upto 12.9.2001 when the respondent terminated the said business relations with the petitioner and promised to make payment of the entire amount then outstanding as due and payable. As on the date of the termination of the agreement, there was an outstanding amount of Rs. 18,24,115/- as due and payable by the respondent company. The respondent company has filed an affidavit in reply to the petition and has inter alia contended that after termination of the services on 12.9.2001 there was a detail correspondence between the parties in respect of a new arrangement worked out between them. It is also the case of the company that the petitioner has not disclosed these vital correspondence in the present petition and therefore petition should be dismissed. the petitioner has not disclosed these vital correspondence in the present petition and therefore petition should be dismissed. In the correspondence which is now annexed to the affidavit in reply also the company has admitted the liability of Rs. 18 lacs. However, under the arrangement which has been worked out it has been agreed that out of Rs. 18 lacs Rs. 10 lacs will be paid immediately while the balance

was to be paid on certain steps being taken. It is the case of the respondent company that inspite of the said arrangement arrived at by and between the parties, the petitioner has failed to carry out their obligations as agreed upon by the petitioner. Particularly my attention is drawn to e-mail dated 17.1.2002 forwarding therewith a draft letter which inter alia provides that there will be a fresh arrangement by and between the petitioner and the respondent in respect of the agency to be continued from Braden Cargo. The said letter at Exhibit - 12 is produced with a letter which was to be addressed by the petitioner to the said Braden and Sidergarda. It has been provided in the said draft letter that new arrangement will be worked out and under the said new arrangement the respondent company will continue to look after the business interest in India of the said parent company.

3. It is the case of the petitioner that all these correspondence were only at negotiation stage and that the said arrangement was never concluded in a final agreement between the parties.

4. Without going into the fact whether there was a finally concluded new agreement or not, it is significant to note that even in the correspondence which is annexed to the affidavit in reply the

company has unequivocally admitted the entire amount and even further agreed that at least the sum of Rs. 10 lacs will be paid immediately out of the total admitted dues of Rs. 18 lacs. Even the said sum of Rs. 10 lacs has not been paid by the respondent company. In the aforesaid circumstances, I am of the opinion that the following order will serve the interest of justice:-

> The petitioner to deposit in Court a sum of Rs. 10 lacs within a period of four weeks from today.
>
> If such a deposit is not made, the petition to stand admitted and advertised.
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> In an event if such deposit is made, the petition to do stand dismissed and the petitioner shall file a suit within a period of four weeks from the date of communication of making of such deposit by a letter of the advocate of the respondent company to the petitioner's advocate. In the event such a suit is not filed within time prescribed hereinabove, the respondent company will be at liberty to withdraw the money deposited in this Court. If such a suit is filed, the amount deposited to be transferred to the credit of the suit and the same to be

invested in fixed deposit of any nationalised bank initially for a period of three years and renewed thereafter from time to time till further orders as may be passed in the suit.

5. Petition disposed of accordingly. No order as to costs.